

Frequently Asked Questions Reduction in Force (Employees notified of RIF 7/1/11 and after)

The order of the questions does not suggest order of importance.

1. If a position is “reduced” in hours as a result of loss of funds or work, would the employee be entitled to reduction in force priority?

No, the employee would not have RIF priority as they still have a permanent position; as such, there is no RIF.

2. The current posting policy allows agencies to decide not to openly recruit for positions to avoid the involuntary separation of an employee through a reduction in force. If the employee has already separated, can the agency bring the employee back into the agency, if they have a suitable opening, without posting?

No. The agency would need to post the opportunity; the agency may determine to post the opportunity internal to the agency and then consider RIF employees from their agency along with current agency employees.

3. If a position is posted “internal to the agency only” does an agency have to consider RIF employees from other agencies?

No, the agency would consider RIF employees from their agency but would not be required to consider RIF employees from other agencies.

4. How do you handle notification of reduction in force for employees who are on leave without pay, short term/long term disability, military leave or on workers comp leave?

Notification requirements for these employees is the same as for any other employee who is scheduled to be separated through a reduction in force. You should make sure that you communicate to employees on military leave that they will receive the same benefits as if they were not on military leave and that they will not be penalized in any way for being on military leave.

5. How do you “identify” the salary grade for employees who are reduced in force from flat rate positions?

According to State Personnel Manual (Section 2), for employees in flat rate positions, the salary grade level shall be the salary grade which has as its maximum, a rate nearest the flat rate salary of the eligible employee.

6. How do you identify the salary grade equivalent for employees who are reduced in force from a career banded position?

For RIF applicants applying for positions in a different classification system than their classification at the time of official written notification (i.e., from graded to career banded or vice versa), a salary grade equivalent is assigned for each competency level within a career banded classification. Applicants shall have priority for positions at the same salary grade or below. RIF applicants shall have priority for positions in the same banded classification at the same competency level or lower as that held at the time of notification, or for positions in a different banded classification with the same or lower journey market rate as that held at the time of notification.

7. G.S. 135-48.40 gives employees benefit of health insurance for up to 12 months following separation from service because of a job elimination. What if you have an employee who has only been with the agency for 10 months but has prior service?

The statute does not require the state service to be consecutive, but rather cumulative. If the cumulative state service is greater than 12 months, and the employee is a participating plan member at the time of notification, the employee would be eligible for this specific health insurance benefit.

8. Can employees who have been separated by reduction in force work with a state agency under a temporary relationship if they are receiving severance?

Yes, employees may work a temporary job with a state agency while receiving severance without forfeiting any severance payments.

9. What is the difference in a Reduction in Force Policy and Reduction in Force Plan?

A Reduction in Force Policy – provides written guidelines and procedures for implementing a reduction in force within the agency. The policy establishes factors that the agency will use when making reduction in force decisions. The guidelines are openly available for review by employees to ensure the agency has a fair and systematic process in place for identifying employees for reduction in force. A copy of the agency Reduction in Force Policy is required to be filed with the Office of State Personnel as a public record.

A Reduction in Force Plan – documents the agency's action steps and decisions for a specific reduction in force situation. The plan typically includes information regarding what the agency did to avoid the specific reduction, how the reduction factors were applied, and identifies the specific work units and employees to be affected by this specific reduction in force. The agency Reduction in Force Plan is maintained by the agency and not filed with the Office of State Personnel. The employee specific information included in the plan is not considered public information.

10. Is an agency required to make their RIF Plan available to employees?

To the extent no employee confidential information is disclosed, an agency shall make their RIF Plan available to employees upon request. Redactions may be required in order to maintain employee confidentiality.

11. Is an agency required to make their RIF Policy available to employees?

Yes.

12. Can the priority reemployment period be extended if RIF employees do not find a position with the State?

No, the priority reemployment period cannot be extended beyond the legislatively prescribed period from the date of official written notification of reduction in force.

13. What can an employee appeal to the Office of Administrative Hearings regarding RIF?

An employee may appeal separation due to RIF to the Office of Administrative Hearings for the following reasons:

- Discrimination on account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or disability;
- Retaliation for the employee's opposition to alleged discrimination on account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or disability;
- Denial of the veteran's preference granted in accordance with Chapter 126, Article 13.

14. Is an employee receiving workers' comp or short term disability eligible for severance pay?

Yes.

15. Are employees with RIF priority, on or off payroll, considered state employees for the purposes of posting vacant positions?

Yes, for the purpose of posting vacant positions, employees with RIF priority, on or off the payroll, are considered state employees. An individual with RIF priority does not have promotional priority once separated from state government.

16. Is a geographical move of a position/employee more than 35 miles from their current work station considered a reduction in force?

No, it is not considered a reduction in force because the position and employee are still needed. The only change is the work station. If the agency transfers position/employee and the employee agrees to the move - there is no priority and no severance. Moving expenses may or may not be offered to the employee. If the agency transfers position/employee and the employee refuses the move – the employee is separated and would not be eligible for priority reemployment or severance salary continuation. Moving expenses may or may not be offered to the employee.

17. Does the RIF priority entitle the RIF candidate to the position if the RIF candidate is substantially equally qualified to the state employees in the applicant pool?

Yes, if the RIF candidate is substantially equivalent.

18. Does RIF priority entitle the RIF candidate to the position if the RIF candidate is substantially equally qualified to outside state government employees in the applicant pool?

Yes, if the RIF candidate is substantially equivalent.

19. How will I report vacation and severance pay to the Employment Security Commission for reduced employees who file an unemployment compensation claim?

You will provide the information through the third party administrator, TALX Employer Services, when they send the request for separation information. You will need to provide the total amount of pay, and the number of weeks to which it must be allocated.

20. Can I defer my severance pay to my supplemental savings plans (401K and 457)?

Severance pay is not eligible to be deferred. The IRS 415 compensation rules states that post-severance payments such as severance pay are not considered 415 compensation under this rule and therefore cannot be deferred to supplemental savings plans.

21. Under the State Personnel Policy, Separation, Section 11, Page 11, “Amount of Payment,” the salary used to determine severance wages is the last annual salary unless the employee was promoted within the previous 12 months. If the employee was promoted within the last 12 months, the salary used to calculate severance pay is the annual salary prior to the promotion plus any across-the-board legislative increases.

Yes. The definition of the salary used to determine severance wages is based on the statutory language and specifically includes legislative increases.

22. If so, then does this also include a reallocation, a trainee adjustment, in-range adjustment, career progression adjustment, etc., also within the last 12 months or ONLY a promotion within the last 12 months to use the previous salary for severance pay calculations?

This statute only speaks to the determination of the salary used to calculate severance.

23. Also, if using only the salary prior to the promotion, but including legislative increases, then does this salary level determination affect which grade level satisfies the priority reemployment?

No. Any job with the State which is permanent, for which an employee with RIF priority applies and is offered satisfies the RIF priority.

24. Section 11, page 5 of the State Personnel Manual reads, “Neither temporary, probationary, nor trainee employees in their initial six months of training shall be retained in classes where employees with a permanent appointment (those who have satisfactorily completed a probationary or equivalent trial period) must be separated in the same or related class”. Is “permanent appointment” interpreted in its strictest form (ie. full-time) as it is defined in Section 3, Page 3, or does it include “permanent part-time” and “time-limited permanent” appointments as well?

For purposes of evaluating and developing a RIF plan, “permanent” should be interpreted in its broadest definition, which would mean the employee has completed his or her probationary period. It should not be restricted to full-time permanent appointments, but any employee in a permanent position, whether full-time or part-time.

25. When it comes to the question of paying severance or a discontinued service retirement, is it strictly the agency decision based on costs, or is the employee involved in the decision? If the two disagree, who prevails? Does the employee have any say in the decision?

The agency has the responsibility to recommend to the Office of State Budget and Management whether to pay the employee severance or discontinued service retirement. The agency can take the employee’s wishes into consideration, but is in no way bound by them. Similarly, OSBM can (and usually does) give serious weight to the agency’s recommendation, but does have the authority to make a different decision.

26. One of the factors in making RIF separation decisions is length of state service. How is “length of state service” defined”? Is it considered total state service? Service within the particular lay-off unit? Length of service within the classification? Etc.

State service is defined as “total state service”. This service credit is the all-inclusive total of all permanent, probationary, trainee and time-limited time, either full-time or part-time (regularly scheduled 20 hours or more each work week), which an employee has served in State government or other recognized public sector systems. This type of service does not have to be continuous. Breaks in service are not counted in the computation for credit. You may consider service within the agency only if you have included this as one of the factors you will consider when making reduction-in-force decisions. It should be clearly spelled out in your agency/university policy.

Length of service is most often used as the tie-breaker when all other factors are equal. An agency/university may also consider service within its own unit as a factor. This would not be in conflict with current state policy as long as the consideration of total state service is not displaced and the option to consider agency service is written in your RIF policy. We suggest using agency service in instances only where total state service is identical. In calculating length of service for RIF reasons, eligible Veterans may receive up to five years credit.

27. I am in a banded position, but my competency level does not match the position competency level. Which competency level (and associated salary grade reference) is used to apply priority?

An employee in a banded position receives priority based on the employee’s competency level and associated salary grade reference.

28. If a permanent, full-time employee notified of RIF accepts a time-limited position funded for two years by federal stimulus money and the time-limited position has the same salary, grade level, and classification, is the employee eligible for priority consideration and severance pay?

The employee would be eligible for RIF priority consideration to a permanent full-time position; however, the employee would not be eligible for severance pay since the employee is accepting a position with a State agency and the appointment is not temporary.

29. If an employee on workers’ compensation leave is separated due to RIF, are they entitled to receive a lump sum payment of vacation and sick leave accumulated only during the first twelve months of workers’ compensation leave?

No. Since the separation is due to the RIF of a position, and in no way related to the employee’s inability to return to work as a result of the workers’ comp injury, then the employee would be eligible for the same leave payout provisions as other employees separated by RIF.

30. Does an exempt employee have RIF priority if the employee is separated from his or her position as a result of reduction in force?

Exempt policy making and exempt managerial employees do not receive RIF priority. They are eligible to receive severance pay since they are subject to GS 126-8.5. However, employees in exempt policy making and exempt managerial positions, due to the statutory language creating these exemptions, may be eligible for priority based on their length of non-exempt service. This type of priority is found in a different section of the State Personnel Act and is different from RIF priority.

31. Does OSP verify that a RIF employee has not received another state job before approving a severance pay request?

When a severance pay request is received by OSP from an agency or university, OSP reviews the calculations and eligibility for severance, ensures documentation is complete, and verifies if reemployment is available. OSP then forwards the information to OSBM for their review and final determination of request (either to approve or deny severance).

32. If an employee is separated due to RIF (and is eligible and has been approved to receive severance) and a few weeks later secures a permanent state position, does the employee forfeit the entire month of severance pay or is the severance pay prorated?

Severance pay would be pro-rated for the period of time from when the separation occurred to when the employee was hired back into a state position.

33. If an employee is receiving short-term disability payments and is then separated due to RIF, is the employee eligible to receive severance pay and/or short-term disability payments?

Under G.S. 125-105(b), an employee has the choice to elect between short-term disability and severance and will in all probability elect severance as that amount is a larger amount than the short-term disability payment. An employee may not receive both severance and short-term disability payments for the same period of time.

34. To be eligible for priority re-employment, is the determination of career status made at the date of notice or as of the date of separation? What if the employee does not have career status on the date of the official notice, but will have career status as of the date of separation?

A career state employee shall receive priority consideration for a period of 12 months from the date of the official written notification. However, if an employee obtains career status anytime between the notification date and separation date, the employee will receive the remainder of their priority reemployment rights credited at the time the employee obtains career status. For example, if an employee was notified of RIF on May 29, 2012 with no career status, and the employee obtained career status on July 1 and is separated due to RIF on July 10, then the employee would have priority re-employment rights from July 1,

2012 through May 28, 2013. If an employee is separated before obtaining career status, then the employee is not eligible for priority reemployment rights.

35. If an employee is reduced-in-force more than once in their careers, do we need to adjust their state service time to calculate severance? For example - an employee is RIF'd in 2001 and is given credit for 10 years of service and is paid severance accordingly. The employee is then reemployed with the State in 2002. Then, the employee is RIF'd in 2009. Even though the employee now has 17 years of retirement service credit, we would only give 7 years of service time to calculate the subsequent severance payment?

No, severance pay is calculated on total state service. In this example, the employee's severance pay is calculated on 17 years of service.

36. Do teachers (covered by GS 115C) that are employed at DHHS, Correction, or DJJDP receive severance pay if they're RIF'd? Are they eligible for RIF Priority?

These individuals are eligible for severance pay; they are not eligible for RIF priority.

37. If my career banded employees do not have their competency assessments completed, how do I determine what priorities they have?

For those employees who have not had their competency assessment completed, the position competency level will be used to determine priority.

38. Does the application of Veterans preference/Military service have an impact on severance calculations?

No, Veterans/Military service is not included when calculating severance.

39. Can I allow a RIF'd employee to come back and do "contract work" at our agency?

In most cases, the answer is no. NCGS 126 8.5 states that: Any employee separated from State government and paid severance wages shall not be employed under a contractual arrangement by any State agency, other than the constituent institutions of the UNC or Community College systems until 12 months have elapsed since separation.

40. Does a RIF employee who has been separated from payroll for more than 31 days maintain career state employee status when re-employed?

No. Once an employee has been separated from payroll for more than 31 days, a new waiting period of 24 months is required before the employee regains career state status.